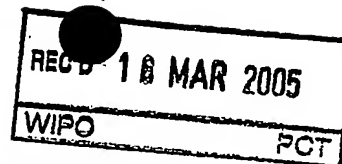


# PATENT COOPERATION TREATY

## PCT



### INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference <b>PCT 21217Y</b>	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. <b>PCT/US03/26446</b>	International filing date (day/month/year) <b>22 August 2003 (22.08.2003)</b>	Priority date (day/month/year) <b>20 August 2003 (20.08.2003)</b>
International Patent Classification (IPC) or national classification and IPC <b>IPC(7): A01N 43/42; C07D 215/04, 401/00 and US Cl.: 514/227.8, 227.2, 235.5, 253, 312, 313, 314, 826, 914</b>		
Applicant <b>MERCK &amp; CO. INC.</b>		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 3 sheets, including this cover sheet.  
  
☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of     sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of report with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand <b>24 February 2004 (24.02.2004)</b>	Date of completion of this report <b>02 March 2005 (02.03.2005)</b>
Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/ US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer <i>Brian Kwon</i> Brian Kwon Telephone No. 571.272.1600

Form PCT/IPEA/409 (cover sheet)(July 1998)

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# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No. \_\_\_\_\_

PCT/US03/26446

## I. Basis of the report

### 1. With regard to the elements of the international application:\*

- ☒ the international application as originally filed.
- ☒ the description:  
 pages 1-13 \_\_\_\_\_ as originally filed  
 pages NONE \_\_\_\_\_, filed with the demand  
 pages NONE \_\_\_\_\_, filed with the letter of \_\_\_\_\_.
- ☒ the claims:  
 pages 14-16 \_\_\_\_\_, as originally filed  
 pages NONE \_\_\_\_\_, as amended (together with any statement) under Article 19  
 pages NONE \_\_\_\_\_, filed with the demand  
 pages NONE \_\_\_\_\_, filed with the letter of \_\_\_\_\_.
- ☐ the drawings:  
 pages NONE \_\_\_\_\_, as originally filed  
 pages NONE \_\_\_\_\_, filed with the demand  
 pages NONE \_\_\_\_\_, filed with the letter of \_\_\_\_\_.
- ☐ the sequence listing part of the description:  
 pages NONE \_\_\_\_\_, as originally filed  
 pages NONE \_\_\_\_\_, filed with the demand  
 pages NONE \_\_\_\_\_, filed with the letter of \_\_\_\_\_.

### 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item. These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

### 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

### 4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages NONE
- ☐ the claims, Nos. NONE
- ☐ the drawings, sheets/fig NONE

### 5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application  
PCT/US03/26446

## V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

### 1. STATEMENT

Novelty (N)	Claims <u>2-14 and 16-21</u>	YES
	Claims <u>1 and 15</u>	NO
Inventive Step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-21</u>	NO
Industrial Applicability (IA)	Claims <u>1-21</u>	YES
	Claims <u>NONE</u>	NO

### 2. CITATIONS AND EXPLANATIONS

Document D1 (US 6,136,839 A) teaches a use of combination of a cyclooxygenase-2 inhibitor and a 5-lipoxygenase inhibitor such as MK-591 for the treatment of inflammatory-associated disorders including atherosclerosis.

Document D2 (Circulation, 1998, Vol. 97, No. 24, pp. 2406-2413) relates to the association of a specific leukotriene receptors (i.e., 5-LO, 5-lipoxygenase activating protein) and the pathogenesis of atherosclerosis in coronary arteries.

Document D3 (US 5,204,344 A) discloses the claimed compound (3-[N-(p-chlorobenzyl)-3-(t-butylthio)-5-(quinolin-2-ylmethoxy)-indol-2-yl]-2,2-dimethylpropanoic acid or its salt.

Document D4 (US 2002/0094977 A1) discloses a use of HMG-COA reductase inhibitors for the treatment of atherosclerosis.

Document D5 (US 5,883,106) discloses a use of 5-lipoxygenase enzyme inhibitor for the treatment of atherosclerosis.

Claims 1 and 15 do not meet Novelty criteria under PCT Article 33(2). Since the interpretation of the instant claims allow for the inclusion of any other unspecified ingredients even in major amounts in said composition, the referenced combination anticipates the claimed invention.

Claims 2-14 and 16-21 do not meet Inventive Step criteria under PCT Article 33(3) since the subject matter of the claimed invention would have been apparent to those skilled in the art in light of the cited references in combination (D1-D5).

Claims 1-21 meet Industrial Applicability criteria under PCT Article 33(4) since the subject matter of the claimed invention is applicable to the therapeutic utility of the claimed compound or composition.